

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 163
Title 14, California Code of Regulations
Re: Herring Fishery

- I. Date of Initial Statement of Reasons: May 22, 2003
- II. Date of Pre-adoption Statement of Reasons: July 29, 2003
- III. Date of Final Statement of Reasons: September 3, 2003

IV. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: June 20, 2003
Location: Mammoth Lakes, CA
- (b) Discussion Hearing: Date: August 2, 2003
Location: Long Beach, CA
- (c) Adoption Hearing: Date: August 29, 2003
Location: Santa Rosa, CA

V. Update:

No changes have been made in the originally proposed regulatory language. However, in the Initial Statement of Reasons, the Department provided two quota options: a no fishery option resulting in a quota of zero tons (Option 1), and an option for a quota in the 2,000- to 3,000-ton range (Option 2). The Department specified that a specific quota for Option 2 would be recommended to the Commission prior to the Pre-Adoption Statement. That specific quota for Option 2 recommended to the Commission was 2,200 tons for San Francisco Bay.

The recommendation for a 2,200-ton quota is based on fishery quotas during recent history; the lowest quota proposed for the San Francisco Bay herring roe fishery during the past ten years was 2,200 tons. The Department believes that this is both the minimum quota which will provide for an economically viable fishery and, based on several concerns about the age structure and health of the current herring spawning population, is the maximum amount of exploitation to allow at this time without further compromising the existing population.

Following the receipt of public comment and discussion of the regulations, the Commission voted to adopt a 2,200 ton quota with a shortened season for San Francisco Bay for the 2003-04 season (Option 2 for subsection 163(g)(4)).

VI. Summary of Primary Considerations Raised in Support of or in Opposition to the

Proposed Actions and Reasons for Rejecting Those Considerations:

Responses to public comments received were included in the Pre-adoption Statement (see attached).

- (1) Mr. Robert Abbott, fishery consultant, in oral comment at the August 29, 2003 Commission meeting, (a) summarized the Precautionary Principle of the FAO, and thus supports fishery closure in light of that principle.
 - (a) The Department concurs.
- (2) The Department received, on July 30, 2003, a twenty-fifth form letter from San Francisco Bay herring permittee Mr. Peter Arancio (a) in opposition to the proposed option to close the herring fishery for the 2003-04 season; and (b) requesting that the Department consider Option 2, a 2,000- to 3,000-ton quota.
 - (a) The Department acknowledges the comment of opposition to fishery closure.
 - (b) The Department has provided for the Commission's consideration a specific recommendation of 2,200 tons as a fishery option. The decision regarding which of the two options to be adopted is made by the Fish and Game Commission.
- (3) Mr. Anthony Bruno, herring gill net permittee, in oral comment at the August 29, 2003 Commission meeting, (a) does not support fishery closure.
 - (a) Comment noted.
- (4) Mr. Dennis Deaver, herring gill net permittee and DHAC representative, in oral comment at the August 29, 2003 Commission meeting, (a) believes that the mesh size is contributing to mortality of younger fish that are dropping out; (b) supports reduction of mesh size and believes that less older fish will be taken if there is allowance for some harvest of younger fish.
 - (a) The Department recognizes the concern regarding the potential mortality to age 2 and 3 fish. At this time, the Department has no documentation of this mortality and is researching methods used to document mortality of this kind in other herring fisheries along the Eastern Pacific coast. Consideration of this source of mortality to younger fish will be integrated into the Department's management strategy evaluation.
 - (b) The Department does not support a reduction of mesh size at this time. The Department does not support the proposal to reduce the current mesh size used in the gill net fishery at this time, without first conducting a comprehensive mesh size field study in San Francisco Bay and/or further evaluation of the current management strategy. In addition, the Department's catch statistics indicate that age 3 fish comprise up to fifty percent of the commercial catch in recent years. This is in direct conflict with the current management strategy to harvest age 4 and older fish. Furthermore, the Department has reason to believe, following the

recent peer review of the Coleraine stock assessment model and the Department's survey methodologies, that a further reduction in mesh size would negatively impact the population.

- (5) Mr. Eddie Genovese, herring gill net permittee and DHAC representative, in oral comment at the August 2 and August 29, 2003 Commission meetings, (a) believes the Department is ignoring results from the 2002-03 hydroacoustic survey results; (b) recommends that a 3,000-ton quota be adopted for the 2003-04 season; (c) believes that there has been a policy shift in the Department concerning communication, as he previously sent a request for data and information to the Department, to which he has not received a response.
- (a) The Department is not ignoring the results of its 2002-03 season hydroacoustic survey. Indeed, it is the hydroacoustic survey results, combined with the results of the spawn deposition survey, which led the Department to seek a more in-depth review of all the data collected to date. Additionally, the Department's method of combining survey estimates, in place for fourteen years, has been to evaluate and combine results for each spawning wave of fish, not an average of all waves combined. The disparity between these two surveys, in both magnitude and trend for each wave, is such that the two surveys cannot be combined to represent one biomass estimate with an adequate level of confidence. The Department is pursuing a thorough review of its management strategies and methods, and will evaluate the survey methods in this review.
- (b) The Department had provided for the Commission's consideration a 2,200-ton quota, which is based on minimum fishery quotas during recent history that have supported a fishery. From a biological standpoint, a 2,200-ton quota will not help rebuild the stock; it may only maintain the stock at its present level. Given the concerns regarding the status of the current population (see response (1)(b) above) the Department does not recommend a fishery option above this level.
- (c) The Department apologizes for the lack of perceived timeliness in responding to Mr. Genovese's request, and has provided the information requested as required by the Freedom of Information Act. There has been no change in Department policy concerning communication with the industry, and the Department intends to continue the close information.
- (6) Mr. Zeke Grader, representing PCFFA, in oral comments provided at the August 2 and August 29, 2003 Commission meetings, (a) opposes Option 1 to close the herring fishery in San Francisco Bay for the 2003-04 season; (b) believes that a closure would result in loss of population monitoring and data collection by the Department during the spawning season; (c) supports Option 2; (d) supports a reduction in mesh size to 2 1/16 inches; and (e) does not support fishery closure at February 13 as part of Option 2.
- (a) Comment noted.

- (b) The Department conducts hydroacoustic and spawn deposition surveys in San Francisco Bay on an annual basis throughout the entire herring spawning season, and will conduct these surveys in each season, whether there is a fishery closure or the fishery remains open.
- (c) Comment noted.
- (d) Comment noted. See response (4)(b).
- (e) The Department consulted with the Director's Herring Advisory Committee regarding this issue and found no opposition. The proposed mid-February closure will allow later-season herring schools to spawn in the bay un-exploited by the gill net fishery. The Department believes that a fishery closure during mid-February will not contribute to any substantial economic hardship to the fishery. Catch data collected by the Department indicate that, in seasons when the entire quota was reached, the average number of fishing days is 38, which is approximately the end of January.
- (7) Mr. Louis Grossi, herring gill net permittee, in oral comment at the August 29, 2003 Commission meeting, (a) does not support fishery closure.
- (a) Comment noted.
- (8) Mr. Bruce Hale, Cormorant Inc., herring buyer and DHAC representative, in oral comment at the August 29, 2003 Commission meeting, (a) does not support fishery closure due to economic hardship; (b) believes that the Department should not use gill net catch data to evaluate the presence of older fish in the population.
- (a) Comment noted. The Department recognizes the potential for economic hardship in proposing a no fishery option. However, the Department must also recognize the responsibility to provide for the long-term viability and sustainability of the fishery. Compromising the long-term health of the Pacific herring population in favor of short-term economic hardship may result in a more severe long-term economic deficit for the herring fishery.
- (b) The Department collects fishery-independent research sample to evaluate the age distribution in the population. Samples from the gill net catches are used to characterize the age selectivity of the gill net gear and is not used to interpret the population structure.
- (9) Mr. Ernie Koepf, herring gill net permittee, DHAC representative, and Cal Herring Association representative, in oral comments at the August 2 and the August 29, 2003 Commission meetings, provided a presentation to the Commission of his interpretation of the Department's data. He: (a) believes the herring peer review was not objective and recommends that it be expanded to include the DHAC on population models and gear; (b) believes the herring population in San Francisco Bay is stable and thriving; (c) believes there has been a policy shift in the Department to emphasize 6- to 9-year-olds rather than to prioritize protection of 2- and 3-year-olds; (d) believes that the Department is abandoning use of the PFMC HModel for herring resource; (e) believes the Department is ignoring results from the

2002-03 hydroacoustic survey and recommends that those results be averaged with the spawn deposition survey results to establish a biomass estimate for 2002-03; (f) recommends a quota be adopted for 2003-04 based on 10 percent of an averaged biomass estimate using the method described by Mr. Koepf (see (9)(e) above).

- (a) The Department sought an independent peer review through the California Sea Grant program. The very nature of the California Sea Grant program and peer review, in general, is that they are independent and unbiased. Participants in a peer review are chosen by a neutral party, in this case California Sea Grant, and considered technical experts in their field. Because the peer review was initiated to determine the appropriateness of the use of the Coleraine stock assessment model to the Pacific herring stock in San Francisco Bay, as well as to determine whether the Department had interpreted the initial results of the model correctly, technical experts in the field of fisheries modeling and fisheries management were chosen by California Sea Grant to participate in the peer review. The Department provided data, both fishery dependent and independent, from the thirty year history of the fishery as well as summaries of the two survey methodologies used to collect the data.
- (b) The Department disagrees with Mr. Koepf's statement regarding the stability and health of the current herring population and in regard to the ability of the herring population to support a fishery at this time. The Department has submitted that, due to the lack of older fish in the population, along with the below-average levels of recruitment to the population and the below average biomass estimates for the past several years, the current population may be unable to support a fishery at this time.
- (c) The Department's management strategy has been, and continues to be, to harvest age 4 and older fish, and to provide for protection of age 2 and 3 year old fish. The Department's concern relates to current trends in age class distribution not seen in this population previously. There is currently a lack of older fish in the population and in the commercial catch. For example, in the early history of the fishery and as recently as the 1999-2000 season, age five fish comprised at least 30 percent and age 3 fish comprised less than 30 percent (and largely less than ten percent) of the commercial catch. For the past three seasons, age 5 fish have comprised less than ten percent and age 3 fish have comprised up to fifty percent of the commercial catch. The Department is concerned that these catch statistics indicate not only a lack of older fish available to the fishery, but that a large portion of age 3 fish, which are thought to be protected, are being harvested. This level of harvest of age 3 fish has not been seen previously in catch trends in the fishery.
- (d) The PPMC HModel that Mr. Koepf refers to is summarized in the Department's 1998 Pacific herring Commercial Fishing Regulations - Final Environmental Document. The Department has not abandoned the use of this model for the herring resource in San Francisco Bay. In light of the most current biological information, and in exercising an adaptive

management strategy, the Department is seeking to re-evaluate the use of this model and the potential use of other appropriate models to herring fishery management in San Francisco Bay.

(e) Comment noted. See response (5)(a) above.

(f) The Department acknowledges that it does not have a combined biomass estimate for the 2002-03 season (see response (9)(e) of Department response above).

(10) Mr. Ernie Koepf, herring gill net permittee, DHAC representative, and Cal Herring Association representative, submitted two letters dated July 31, 2003 (marked '1' and '2') and one dated August 6, 2003. Mr. Koepf (a) does not support fishery closure. (b) The foundation for Mr. Koepf's comments is the assertion that the data presented by the Department is invalid, and that the Department's current management strategy is misguided and unscientific.

(a) Comment noted.

(b) The Department does not agree with Mr. Koepf's assertion that Department data is invalid, nor that the management strategy is misguided and unscientific. The Department has collected 30 years of fishery independent data, and this data has been, and continues to be, the foundation for the management of the commercial herring fishery in San Francisco Bay. Indeed, the information presented by Mr. Koepf in his correspondence and at the Commission meeting was derived from the very same data that Mr. Koepf asserts is invalid. In addition, the Department is pursuing a thorough review of its management strategies and methods, and will evaluate the survey methods and data in this review. As a first step in this process, the Department sought an independent peer review, administered by California Sea Grant, of the use of its herring data and methods in addition to a stock assessment model, to provide scientific assessment of the validity of the data and management strategy.

(11) Mr. David Lawler, herring gill net permittee and DHAC representative, in oral comment at the August 29, 2003 Commission meeting, (a) doubts the validity of the spawn deposition survey to adequately represent subtidal spawns; (b) believes the legal mesh size is too large and should be reduced; (c) recommends that the 3 percent tolerance on mesh size enforcement be re-implemented.

(a) The Department does not agree that the spawn survey data is inaccurate, and the perception that the Department is basing the no fishery option solely on the results of the spawn survey is erroneous. Current methods used to evaluate subtidal spawns are influenced by the conditions present in San Francisco Bay. Water conditions such as extremely low visibility, and perilous conditions due to vessel traffic and strong currents, render alternate methods such as diver surveys untenable in this location. However, the Department considers the

evaluation of the current management strategy a priority for the continued precautionary management of the San Francisco Bay herring fishery. This priority stands regardless of whether the Commission adopts a no fishery option.

(b) Comment noted. Please see response (4)(b).

(c) The Department changed its method of measuring net mesh size in 1998. The Department provided for a one-year tolerance of 3 percent to provide permittees the opportunity to comply with the new measurement regulation. Enforcement has advised the Department that any percent tolerance is difficult to enforce. The Department acknowledges the variability in meshes when a net is made and distributed, however, regulations provide for this variability by averaging mesh size over ten meshes (see Subsection 163(f)(2)(B)). Enforcement is currently exploring alternative measurement methods.

(12) Mr. Sam Liberati, herring gill net permittee and DHAC representative, in oral comment at the August 29, 2003 Commission meeting, (a) believes that the mesh size and net hanging ratio are contributing to mortality of younger fish that are dropping out; (b) requests a mesh size study be conducted; (c) recommends that the 3 percent tolerance on mesh size enforcement be re-implemented.

(a) Comment noted. Please see response (4)(a).

(b) Current regulations provide for a mesh size study in San Francisco Bay (see subsections 163(f)(2)(B) and 163(g)(4)(A), Title 14, CCR). However, due to severe restrictions in budget and available personnel, implementation of the mesh size study is not possible at this time.

(c) Comment noted. Please see response (11)(c).

(13) Mr. Kevin Marilley, herring gill net permittee, in oral comment at the August 29, 2003 Commission meeting, (a) doubts the validity of the spawn deposition survey methods to adequately represent subtidal spawns; and (b) supports the Cal Herring proposal (see (10)(e) and (10)(f)).

(a) Comment noted. Please see response 11(a).

(14) Mr. Tom O'Hara, herring gill net permittee, in a letter received August 19, 2003 and in oral comment at the August 29, 2003 Commission meeting, (a) doubts the validity of the spawn deposition survey results; (b) does not support indefinite fishery closure (c) is concerned about fiscal impact of closure on the industry and city; (d) supports Option 2; (e) supports a reduction in mesh size to 2 1/16 inches; (f) believes that the 3 percent tolerance on net

measurement be reinstated, as the fines for having the wrong mesh are too high.

(a) Comment noted. Please see response 11(a).

(b) The Department has not proposed an indefinite fishery closure, but a fishery closure for the 2003-04 fishing season. The current regulatory cycle requires annual review of quota proposals for the herring fishery.

(c) Comment noted. Please see response (8)(a).

(d) Comment noted.

(e) Comment noted. Please see response (4)(b).

(f) Comment noted. Please see response (11)(c).

(15) Ms. Donna Pollock, involved participant in gill net herring fishery, in a letter dated July 29, 2003, (a) does not support fishery closure; (b) is concerned about the economic impact of a fishery closure;

(a) Comment noted.

(b) Comment noted. Please see response (8)(a).

(16) Ms. Karen Reyna, representing the Ocean Conservancy, in oral comment at the August 29, 2003 Commission meeting, (a) would not support a reduction in mesh size proposed by the industry unless a study is conducted to evaluate impacts to herring and to other species.

(a) The Department concurs. Also, please see response (12)(b).

(17) Mr. Matt Ryan, herring gill net permittee, in oral comment at the August 29, 2003 Commission meeting, (a) believes that the loss of age 6 herring and older is a normal consequence of El Niño, and is not a population problem; (b) believes that the 3 percent tolerance on net measurement be reinstated; and (c) does not believe that computer models are always reliable.

(a) The Department concurs that the San Francisco herring population may be suffering long-term effects from previous El Niño events (i.e., regime shift effects). However, Department data from the past six years illustrates a progressive lack of older aged fish in the current population, and the lack of strong recruitment of 4- and 5-year-old fish to the fishery, both of which are indicators of an already-weakened stock. In spite of potential improvement of environmental conditions with the weakening of the 2002-03 El Niño, these concerns, coupled with possible long-term effects from previous El Niño events, has lead to the Department's proposal for a fishery closure.

(b) Comment noted. Please see response (11)(c) above.

(c) The Department does not intend to use the Coleraine stock assessment model as the sole method for evaluating the stock in San Francisco Bay. The model is intended to serve as a potential additional tool that may assist the Department in interpreting data collected from the population, and recognizes that statistical models provide only approximations.

(18) Mr. Joe Spadaro, herring gill net permittee and DHAC representative, in oral comment at the August 29, 2003 Commission meeting, (a) supports use of the Cal Herring data analysis presented at the meeting.

(a) Comment noted. Please see responses (9)(e) and (9)(f) above.

(19) Mr. Andrew Stock, herring gill net permittee, in a letter dated August 13, 2003, (a) supports fishery closure for two years; (b) recommends allowance for

attrition of permits and reduce the fleet by 2/3; (c) recommends waiver of all fees in event of a fishery closure; (d) recommends reduction of permit transfer fee; (e) recommends that the season be shortened to January-February with simultaneous fishing of all platoons; (f) recommends regulation of net hanging ratio; (g) recommends increasing the mesh size to 2 ¼ inches; (g) recommends to reduce the legal corkline allowed from 65 fathoms to 50 fathoms.

(a). The Department's preferred option was fishery closure. Please see response (14)(b) regarding regulatory cycle schedule.

(b) The Department already has a plan for attrition of permits in Subsection 163(c)(1) of Title 14, CCR.

(c) Comment noted. The Department would not collect renewal fees such as those for herring buyer permits and herring fishery permits in the event of a fishery closure since the herring renewal fees are considered user fees.

(d) Permit transfer fees are established in legislation. A reduction in the permit transfer fee would require a legislative change which is outside of the authority of the Department and the Commission.

(e) The Department has proposed a shortened season in conjunction with Option 2, which includes fishing in December to accommodate the three fishing platoons. The Department does not support removal of the platoon system; the use of rotating platoons is required for the orderly conduct of the fishery due to potential conflicts with other user groups on San Francisco Bay.

(f) Enforcement staff has advised the Department that at this time enforcement of a net hanging ratio is not possible. However, the Department intends to revisit the option for net hanging regulation restrictions in the future.

(g) Current regulations provide for a range of mesh sizes between no less than 2 1/8 inches and no more than 2 ½ inches. Any permittee who wishes to use a 2 1/4-inch mesh net is permitted to do so. However, the Department does not intend to change the minimum mesh size in the absence of a mesh size study.

(h) The regulation to which Mr. Stock refers is found in Subsection 163(f)(2)(A). The Department acknowledges the comment, and will discuss this recommendation with the DHAC in the future.

(20) Mr. Harry Vogl, herring gill net permittee, in oral comment at the August 29, 2003 Commission meeting, (a) recommends that the Department use dive surveys to assess subtidal spawns despite visibility problem; (b) supports a reduction in mesh size to 2 1/16 inches.

(a) Comment noted. Please see response (11)(a).

(b) Comment noted. Please see response (4)(b).

(21) Mr. Paul Weakland, fisherman, in oral comment at the August 29, 2003 Commission meeting, (a) requested information regarding the number of

fishermen that would be affected, and what the loss of revenue to the Department would be, if the no fishery option were approved.

(a) There are currently 427 permit holders in the San Francisco Bay fishery. Revenues that would be lost to the Department in the event of a fishery closure include a landings tax equivalent to \$25.00/ton. Additionally, in the event of the occurrence of no fishery, the Department would not collect permit renewal fees such as those for herring buyers permits and herring fishery permits.

(22) Mr. Dan Yoakum, herring eggs on kelp permittee and DHAC representative, in a letter dated August 9, (a) recommends a 2,500 ton quota for the 2003-04 season; (b) recommends a 12 hour closure between platoons after one platoon has reached its quota; (c) supports the shortened season in Option 2; (d) supports reduction in mesh size to 2 1/16 inches; (e) recommends that individual quotas be established; (f) recommends that South San Francisco Bay be closed temporarily; (g) recommends that an in-season threshold be established; (h) recommends a quota based on 10 percent of the spawning biomass; (i) does not support fishery closure.

(a) Comment noted. Please see response (5)(b).

(b) Comment noted. A closure following the completion of a platoon's quota is not currently in the regulations.

(c) The Department concurs.

(d) Comment noted. Please see response (4)(b).

(e) The Department does not support the establishment of individual quotas. Vessels used in the herring fishery vary in size and holding capacity, thus creating an inequitable situation under individual quotas.

(f) Comment noted. The Department considers many options to restore the condition of the stock; closure of areas with substantial spawning habitat such as eelgrass beds may be beneficial, and an evaluation of suitable spawning substrate in the south bay must be considered.

(g) Mr. Yoakum refers to real-time assessment of spawning stock biomass present throughout the season. However, herring return to San Francisco Bay in up to eight waves of fish, and a complete estimate of stock abundance is not possible until the end of the spawning season, which occurs after the commercial fishery season has closed. Therefore, in-season determinations based on stock size are not possible.

(h) Comment note. The Department traditionally establishes quotas based on a range of between 10 and 15 percent exploitation based on the biomass estimate. The Department does not have a biomass estimate for the 2002-03 season (Please see response (9)(f)).

(i) Comment noted.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

(1) Alternative 1:

A fishing quota of 1,350 tons for San Francisco Bay, representing 10 percent of the 2002-03 spawn deposition survey estimate of 13,500 tons. In keeping with a conservative management strategy, the spawn deposition survey estimate, which is the more conservative of the two Department survey estimates, would be utilized as a proxy for the 2002-03 biomass estimate upon which to base a fishery, rather than a combined biomass estimate from the disparate spawn deposition and hydroacoustic survey estimates. An exploitation rate of 10 percent reflects the concerns the Department has regarding the current age structure of the population and the uncertainty of the level of recruitment to the fishery for the 2003-04 season. The Department does not support this alternative based on the following concerns:

(1) the Department proposed closure of the fishery for two other seasons based on biomass estimates of 21,532 and 20,000 tons (1993-94 and 1998-99 seasons, respectively) and cannot justify proposing a fishery based on the relatively lower estimate of 13,500 tons; (2) there are concerns that the population cannot support a fishery at this level given the current age structure (i.e., fewer older age class fish in the population and a lack of strong recruitment to the fishery); and (3) the quota in this alternative falls below the Option 2 quota range of 2,000 to 3,000 tons.

(2) Alternative 2.

A fishing quota representing a percentage of the 2002-03 San Francisco Bay season combined biomass estimate. This alternative utilizes results from the two surveys using the traditional methodology of integrating the school-by-school estimates to arrive at a combined spawning biomass estimate. However, several concerns have prompted the Department to avoid using this estimate to represent the actual biomass in the bay: (1) the 2002-03 survey estimates consistently differ by marked amounts on a school-by-school basis; (2) the two survey estimates show different population trends following the 1997-98 season; and (3) the age structure of the current population indicates a potential decline in the ability of the population

to support a fishery.

(b) No Change Alternative:

A no change alternative would provide a quota for the 2003-04 fishing season of 3,540 tons based on an exploitation rate of 10 percent of the biomass estimate for the previous season in 2001-02. The Department does not support this alternative based on the following concerns: (1) the 2001-02 biomass estimate is not a valid proxy for the 2002-03 biomass estimate; (2) the Department is concerned that the current population cannot support a fishery based on an exploitation rate of 10 percent of the 2001-02 season biomass estimate; (3) the fishery was only able to land 64 percent of their quota during the 2002-03 season; (4) there is no indication (strong recruitment to the fishery) that the fishery will be able to land 3,540 tons during the 2003-04 season; and (5) the quota in a no-change alternative exceeds the Option 2 quota range of 2,000 to 3,000 tons.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective as and less burdensome to the affected private persons in the long run than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The regulations proposed would affect approximately 450 commercial herring fishermen and two processing plants in California, all of which are small businesses as defined under Government Code Section 11342.610. These direct impacts arise from interim management measures resulting in the close of the San Francisco herring fishery for the 2003-04 season only. Averaging herring harvests and values from years 2001 and 2002, to represent nominal revenue potential for 2003-04, we would project potential 2003-04 ex-vessel revenues of approximately \$3,125,500. Among the 450 herring permit holders, this represents potential individual revenues of approximately \$6,900 on average (before deducting costs of doing business) during the 2003-04 fishing season.

The proposed action for the 2003-04 season will not have a long-term significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in

other states, although the economic impact of a closure extending beyond one season would need evaluation. The Commission has made an initial determination that the adoption of the recommended regulations may have a temporary adverse economic impact directly affecting a number of California's small businesses. However, these economic impacts will not likely directly affect the ability of California small businesses to compete with businesses in other states. This is because most of the herring landings are transported out of State for "added value" processing and export (primarily to Japan and China).

The proposed changes to season dates are not expected to have a significant statewide adverse economic impact on businesses in fishing areas outside San Francisco Bay.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Statewide, the closure of the 2003-04 herring fishery would result in a loss of approximately \$3,160,802 of additional economic output foregone. This takes into account the multiplier effect that the herring ex-vessel revenue creates as it cycles through California's economy. We project that each dollar of ex-vessel herring revenue generates another \$2.01 as it moves through other business sectors within California. Recognizing that each \$1 million in commercial fishing revenue supports about 11.6 full- and part-time jobs, we estimate the potential employment impact to be at most 36 jobs Statewide. This is because most of the "added value" processing of California herring takes place out of state, thus the actual employment impact to California would be much lower.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or reporting requirements stipulated under the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

UPDATED INFORMATIVE DIGEST\POLICY STATEMENT OVERVIEW

The Informative Digest from the Initial Statement of Reasons specified that for Option 2 of the two quota options proposed, a specific quota within a 2,000- to 3,000-ton range would be recommended prior to the 2003 Pre-Adoption Statement. The Updated Informative Digest from the Pre-Adoption Statement of Reasons was amended to reflect the specific quota recommended to the Commission.

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulatory changes will establish fishing quotas by area for the 2003-04 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays.

The Department of Fish and Game (Department) is recommending a closure for the 2003-04 San Francisco Bay herring fishery (Option 1). This results in a proposed fishing quota of zero tons. Conditions for reopening of the fishery will be outlined in a subsequent regulatory package.

In addition to the recommendation for a fishery closure for the 2003-04 season, the Department is providing the Commission the option of considering a fishery quota within a 2,000- to 3,000-ton range (Option 2). This range is based on alternatives the Department has reviewed but does not recommend as its preferred option. Additional information regarding quotas within this range will be provided to the Commission prior to the 2003 Pre-Adoption Statement. The Department proposes a fishery quota of 2,200 tons for Option 2 for San Francisco Bay.

For Tomales Bay, an initial 300-ton fishing quota (6.8 percent of the 2002-03 estimated spawning biomass of 4,382 tons) is proposed, with provisions to increase the quota in-season if escapement goals are achieved by February 15, 2004. This season, the recommendation for in-season increases is as follows:

- If the spawning escapement is more than 3,000 tons, increase the quota to 400 tons.
- If the spawning escapement is more than 4,000 tons, increase the quota to 500 tons.

The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, for the 2003-04 season only, shall be no less than 2 inches or greater than 2 ½ inches. The proposed one-year continuation of the regulation, originally approved for the 2000-01, 2001-02 and 2002-03 seasons only, will allow the Department to continue to evaluate the effect of reduced mesh length on

the size and age composition of herring caught in 2-inch mesh gill nets.

Changes to the Department herring season dates are recommended to coincide with changes in the annual calendar.

The following is a summary of those proposed changes in Section 163, Title 14, CCR:

- Set the dates of the roe herring fisheries in San Francisco Bay from noon on Monday, December 1, 2003 to noon on Tuesday, December 23, 2003 ("DH" gill net platoon only), and from 5:00 p.m. on Sunday, January 4, 2004 to noon on Friday, February 13, 2004. Although the season closure date has traditionally been set in mid-March, the Department is recommending a February closure as a conservative measure should the Commission approve a fishery within Option 2.
- Set the dates of the roe herring fishery in Tomales Bay from 5:00 p.m. on Sunday, December 28, 2003 until noon on Wednesday, December 31, 2003, and from 5:00 p.m. on Sunday, January 4, 2004 to noon on Friday, March 5, 2004.
- Transfer 10 tons of quota from the underutilized herring fresh fish fishery to the gill net fishery for use in any future gill net mesh size study.

Following the receipt of public comment and discussion of the regulations, the Commission voted to adopt a 2,200 ton quota for San Francisco Bay for the 2003-04 season (Option 2 for subsection 163(g)(4)).

Section 163 is amended to read:

§163. Harvest of Herring.

Herring may be taken for commercial purposes only in those areas and by those methods specified in subsections (f)(1) and (f)(2) of this section under a revocable permit issued to an individual on a specified fishing vessel by the department. Transfer of permits from one boat to another may be authorized by the department upon written request by the permittee, accompanied by a copy of the current commercial boat registration of the new vessel. The fee for any approved transfer or substitution of a permit pursuant to paragraph one shall be \$50 for any request received by the department after the issuance date of November 15. The \$50 transfer fee must be received in the department's San Francisco Bay Area Marine Region office no later than five working days after written approval of any boat transfer or permittee substitution. Any permittee denied a transfer pursuant to paragraph one of this section may request a hearing before the commission to show cause why his request should not be denied. Permittees shall have their permit in their possession (including the attachment of any changes approved by the department after the permit is issued) and shall be aboard the vessel named on their permit at all times during herring fishing operations, except that the department may authorize a permittee to have a crew member temporarily serve in his or her place aboard the vessel during a season. Requests for temporary permittee substitution must be submitted in writing by the permittee, accompanied by a copy of the temporary substitute's current California commercial fishing license. Two permits may be jointly fished on a single vessel upon approval of a written request by both permittees to the department. A permittee may simultaneously fish his or her own permit and a permit temporarily transferred to him or her on a single vessel within the same fishing group. A permittee serving as a temporary substitute on a permit while simultaneously fishing his or her own permit on a single vessel in the same fishing group shall incur the same penalties on his/her permit for all violations as those incurred against the permit for which he/she is serving as temporary substitute as prescribed in these regulations and in Section 163.5, Title 14, CCR. A person may not serve as a temporary substitute on more than one permit simultaneously on a single vessel in the same fishing group. Any request received by the department from November 1 to November 15 to transfer boats or substitute a permit or to simultaneously fish two permits on a single vessel shall be processed for approval by the department after the issuance date of November 15.

(a) Qualifications of Permittee. To obtain a permit to take herring a person shall:

(1) Be a currently licensed California commercial fisherman. When a permit is held in partnership (pursuant to the provisions of Section 8552.6 of the Fish and Game Code), both partners must be currently licensed California commercial fishermen.

(2) Have been a permittee during the previous herring season.

(3) Qualify for an odd- or even-numbered permit as specified in subsection (c)(1)(B).

(4) Qualify for a "DH" gill net permit as specified in subsection (c)(1)(C).

(5) Have submitted lists of crewmembers assisting in fishing operations as specified in subsections (e)(2) of these regulations, release of property forms and payment for all herring landed in excess of an established individual permit quota as specified in subsection (e)(5) of these regulations, and all fees from prior seasons.

(6) Any person denied a permit under these regulations may request a hearing before the commission to show cause why his or her permit should not be denied. Applicants disqualified under subsections (c)(1)(B) or (c)(1)(C) will be granted a hearing if the number of points claimed would have placed them in the point category from which new permits will be issued.

(b) Permit Applications. Each applicant for a herring permit shall:

(1) Completely fill out and submit the required department application form (available at the

department's San Francisco Bay Area Marine Region or Eureka office). No person shall submit more than one application per season. Applications shall include the filing fee, as specified in section 8550.5 of the Fish and Game Code, and copies of the current California certificate of boat registration and commercial fishing license of the applicant.

(2) Permittees will be issued permits for the same area and gear type they held during the previous season. In San Francisco Bay, round haul permittees who transferred gear type to gill net were designated as CH-(600-642)-SF permittees. For every conversion of gear type to gill net by a round haul permittee, the amount of herring allocated to each round haul permittee was transferred from the round haul quota to the gill net quota. For each round haul permit converted prior to October 6, 1995, fishing with gill net gear is authorized in two of the following fishing periods: odd-numbered permits, even-numbered permits, or December herring ("DH") permits. The permit holder of a converted round haul ("CH") permit is permanently assigned to the two fishing groups ("DH", odd-, or even-numbered permit) he or she designated. For every conversion of gear type to gill net by a round haul permittee after October 6, 1995 but before October 2, 1998, the permit is permanently in the two fishing groups ("DH", odd-, or even-numbered permit) assigned by the department. All remaining round haul permits as of October 3, 1998 were converted to gill net permits and assigned to a single gill net group.

Upon transfer, the department assigned each converted "CH" permit to a single gill net group ("DH", odd numbered, or even-numbered permit) as designated by the permit holder. A round haul herring permit, held in partnership prior to November 3, 1994 and subsequently converted to a "CH" permit prior to October 2, 1998, is not subject to assignment to a single gill net group upon transfer to one of the partners.

(3) Submit the required application form for Humboldt, Tomales or San Francisco bays, or Crescent City in time for it to be received at the department's San Francisco Bay Area Marine Region office, prior to 5:00 p.m. on the first Friday of October. Any application received or postmarked after the above deadline will not be eligible for consideration for the current California herring season.

(4) Subsections (a)(2) and (b) do not apply to permits issued for taking herring in ocean waters or to fresh fish market permits.

(c) Permits.

(1) Permits to take herring for roe purposes will be issued by the department beginning November 15. Permits will be sent by certified mail, return receipt requested, to the permittees. Not more than three permits shall be issued for Crescent City and not more than four permits shall be issued for Humboldt Bay.

No new round haul permits shall be issued for San Francisco Bay. No new gill net permits shall be issued for the Tomales Bay permit area until the maximum number of permits is less than 35. No new odd- or even-numbered gill net permits shall be issued for San Francisco Bay until the maximum number of permits is less than 232. No new "DH" permits shall be issued until the maximum number of permits is less than 116. The permittee shall be responsible for all crew members acting under his or her direction or control to assure compliance with all Fish and Game regulations as provided in this section, or in the Fish and Game Code, relating to herring.

(A) The total number of gill net permits issued to individuals not qualifying under subsection (a)(2) shall be the difference in number of permittees meeting such qualifications and the total number of gill net permits authorized by the commission in subsection (c)(1).

(B) Individuals not qualifying under subsection (a)(2) will be eligible to apply for any available odd- or even-numbered gill net permits provided they are a currently licensed California commercial fisherman.

(C) Individuals not qualifying and receiving permits under subsections (a)(2) or (c)(1)(B) will be eligible to apply for any available "DH" gill net permits provided they are a currently licensed California commercial fisherman.

(D) In the event that the number of eligible applicants qualifying under subsections (c)(1)(B) or (c)(1)(C) exceeds the available permits, a lottery shall be held. Preferential status in the lottery will be given under the following conditions:

1. One point (maximum of ten) for each year an applicant has held a valid California commercial fishing license in the previous twelve years (prior to the current license year). A point shall be granted only if the applicant's name appears on the department's master file of commercial licensees or if the applicant presents a valid commercial fishing license or verifiable receipt for the year claimed.
2. Five points for one year of service as a paid crewmember in the herring fishery, three points for a second year of service as a paid crewmember, and two points for a third year as a paid crewmember, beginning with the 1978-79 herring fishing season, not to exceed a maximum of 10 points.
3. Preference points awarded for participation in the herring fishery shall only be granted if the applicant's name has been filed with the department pursuant to subsection (e)(2) of these regulations, and is supported by documentation demonstrating proof of payment for service on a crew in the California herring roe fishery as specified in section 8559 of the Fish and Game Code.
4. Permits will be issued predicated on the total number of points accrued by an applicant, beginning with those applicants who accrue the maximum number of points and working in descending order from this maximum. A drawing will be held to allocate the remaining permits when the permits available are exceeded by the number of applicants in a particular point category.

(E) Preferential status points will not be given for participation on vessels with permits specified in subsections (c)(2) and (c)(3) of this section.

(2) Fresh Fish Market. Ten permits will be issued to take herring for the fresh fish market in San Francisco Bay and five in Tomales Bay. See subsection 699 (b) of these regulations for the fee for this permit. However, no permittee may take or possess herring except in the amount specified on a current daily market order, not to exceed 500 pounds, from a licensed fish dealer. Fresh fish market permits will be issued beginning November 1 at the department's San Francisco Bay Area Marine Region office. In the event there are more applicants than the specified number of available fresh fish permits, a lottery will be held to determine the permittees. Applicants may apply for only one bay. Fresh fish market permits shall be in force from November 2 through November 15 and April 1 through October 31.

(3) Ocean Waters. Permits to take herring in ocean waters will be issued by the department at its offices in Monterey, the San Francisco Bay area and Eureka. See subsection 699(b) of these regulations for the fee for this permit.

Herring taken under the authority of subsections (c)(2) and (c)(3) may not be sold for roe purposes.

(d) Vessel Identification. The master of any boat engaged in taking herring under these regulations shall at all times while operating such boat, identify it by displaying on an exposed part of the superstructure, amid ship, on each side and on top of the house visible from the air, the herring permit number of that vessel in 14-inch high, 2-inch wide black Roman alphabet letters and Arabic numerals painted on a white background permanently fixed to each side of the vessel.

(e) Monitoring of Herring.

- (1) Herring taken for roe purposes may only be delivered to a person licensed pursuant to subsection (j) of these regulations.
 - (2) Within four weeks of the date an individual quota is reached, or within four weeks of the end of the season, the permittee shall submit to the department's San Francisco Bay Area Marine Region office a list of crewmembers assisting in fishing operations during the current herring season. The list shall include the full name and California commercial fishing license number of each crewmember. Gill net permittees shall notify the department's San Francisco Bay Area Marine Region office within 24 hours if they terminate fishing operations for the season prior to the overall quota being taken.
 - (3) The department will estimate from the current trend of individual boat catches the time at which the herring season catch will reach any quota permitted under these regulations and will publicly announce that time on VHF/Channel 16. It shall be the responsibility of all permittees to monitor this radio channel at all times. Any announcement made by the department on VHF/Channel 16 shall constitute official notice. All fishing gear must be removed from the water by the announced time terminating fishing operations. The department may announce a temporary closure for the gill net fishery in order to get an accurate tally of landings and to allow all boats to unload. If the fishery is reopened, permittees may be placed on allotted tonnages to preclude exceeding a quota and, if necessary, additional time may be granted to reach the quotas.
 - (4) It is unlawful to transfer herring or herring nets from one permittee to another or from one boat to another, or from one gear type to another except that, nonmotorized lighters may be used, provided they do not carry aboard any gear capable of taking herring, including net reels, and that the catches of not more than one permittee are aboard the lighters at any time. Permit vessels shall not serve as lighters for other permit boats. In San Francisco Bay a permittee and his/her gear must stay together when delivering fish to market. Except as specified in subsection (e)(6) of these regulations, all fish taken by gill nets shall be retained and landed. Gill net permit vessels may not be used to assist in herring fishing operations during their off-week.
 - (5) All herring landed in excess of any established permit quota shall be forfeited to the department by the signing of a Release of Property form (FG-MR-674 (Rev. 5/02)), which is incorporated by reference herein. Such fish shall be sold or disposed of in a manner determined by the department. The proceeds from all such sales shall be paid into the Fish and Game Preservation Fund.
 - (6) Sturgeon, halibut, salmon, steelhead and striped bass may not be taken by or possessed on any vessel operating under the authority of these regulations. All sturgeon, halibut, salmon, steelhead and striped bass shall be returned immediately to the water.
- (f) Methods of Take.
- (1) For purposes of this section regarding harvest of herring: San Francisco Bay is defined as the waters of Fish and Game districts 12 and 13 and that portion of district 11 lying south of a direct line extending westerly from Peninsula Point, the most southerly extremity of Belvedere Island (37 degrees 51 minutes 43 seconds N, 122 degrees 27 minutes 28 seconds W), to the easternmost point of the Sausalito ferry dock (37 degrees 51 minutes 30 seconds N, 122 degrees 28 minutes 40 seconds W); Tomales Bay is defined as the waters of district 10 lying south of a line drawn west, 252 degrees magnetic, from the western tip of Tom's Point (38 degrees 12 minutes 53 seconds N, 122 degrees 57 minutes 11 seconds W) to the opposite shore (38 degrees 12 minutes 44 seconds N, 122 degrees 57 minutes 42 seconds W); ocean waters are limited to the waters of districts 6 (excluding the Crescent City area), 7, 10 (excluding Tomales Bay), 16 and 17 (except as specified in subsection (h)(6) of these

regulations); Humboldt Bay is defined as the waters of districts 8 and 9; Crescent City area is defined as Crescent City Harbor and that area of the waters of district 6 less than 20 fathoms in depth between two nautical measure lines drawn due east and west true from Point Saint George (41 degrees, 47 minutes, 07 seconds N, 124 degrees, 15 minutes, 16 seconds W) and Sister Rocks (41 degrees, 39 minutes, 31 seconds N, 124 degrees 08 minutes 43 seconds W). (2) The use of round haul nets to take herring for roe purposes is prohibited. The use of round haul nets to take herring is prohibited except in ocean waters (as defined in subsection (f)(1) of these regulations).

(A) No permittee shall possess or fish more than a total of 65 fathoms (1 shackle) of gill net in San Francisco and Tomales bays. Said gill nets shall not exceed 120 meshes in depth. In Humboldt Bay and Crescent City Harbor, no permittee shall possess or fish in combination more than 150 fathoms of gill net. Fresh fish permittees shall not possess or fish more than 65 fathoms (1 shackle).

Set gill nets shall be anchored by not less than 35 pounds of weight at each end, including chain; however, at least one-half of the weight must be anchor. Gill nets shall be tended at all times in San Francisco Bay. Tended means the registered gill net permittee shall be in the immediate proximity, not exceeding one nautical mile, of any gill net being fished.

(B) In Tomales Bay, for the ~~2002-03~~ 2003-04 season only, the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 inches or greater than 2 1/2 inches, except that four permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets approved by the department with mesh less than the size designated herein. The use of mesh size of no less than 2 inches or greater than 2 1/2 inches is designated for evaluation purposes by the department and shall revert to a mesh size of no less than 2 1/8 inches or greater than 2 1/2 inches following the ~~2002-03~~ 2003-04 season, unless otherwise designated herein. In Humboldt Bay and Crescent City Harbor the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 1/4 inches or greater than 2 1/2 inches. In San Francisco Bay the length of the meshes of any gill net used or possessed in the roe fishery shall not be less than 2 1/8 or greater than 2 1/2 inches, except that six permittees (designated by the department in writing) participating in department-sponsored research on mesh size may use gill nets approved by the department with mesh less than 2 1/8 inches. The meshes of any gill net used or possessed by fresh fish permittees shall not be greater than 2 inches.

Length of the mesh shall be the average length of any series of 10 consecutive meshes measured from the inside of the first knot and including the last knot when wet after use; the 10 meshes, when being measured, shall be an integral part of the net as hung and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while 10 meshes are suspended vertically under one-pound weight, from a single stainless steel peg or nail of no more than 5/32 inch in diameter. In Humboldt Bay and Crescent City Harbor, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 22 1/2 inches or greater than 25 inches. In Tomales Bay, the length of any series of 10 consecutive meshes as determined by the above specifications shall not be less than 20 inches or greater than 25 inches. In San Francisco Bay, the length of any series of 10 consecutive meshes as determined by the above specification shall not be less than 21 1/4 inches or greater than 25 inches.

(C) No net shall be set or operated to a point of land above lower low water or within 300 feet of the following piers and recreation areas: Berkeley Pier, Paradise Pier, San Francisco Municipal Pier between the foot of Hyde Street and Van Ness Avenue, Pier 7 (San Francisco), Candlestick Point State Recreation Area, the jetties in Horseshoe Bay, and the fishing pier at

Fort Baker. No net shall be set or operated within 70 feet of the Mission Rock Pier. In the Crescent City area and Humboldt Bay gill nets may be set or operated within 300 feet of any pier.

(D) No nets shall be set or operated in Belvedere Cove north of a line drawn from the tip of Peninsula Point (37 degrees 51 minutes 43 seconds N, 122 degrees 27 minutes 28 seconds W) to the tip of Elephant Rock (southwest of Pt. Tiburon at degrees 52 minutes 19 seconds N, 122 seconds degrees 27 minutes 03 seconds W). Also, no gill nets shall be set or operated from November 15 through February 15 inside the perimeter of the area bounded as follows: beginning at the middle anchorage of the western section of the Oakland Bay Bridge (Tower C at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 40 seconds W) and then in a direct line southeasterly to the Lash Terminal buoy #5 (G"5" buoy, flashing green 4s at 37 degrees, 44 minutes, 23 seconds N, 122 degrees, 21 minutes, 36 seconds W), and then in a direct line southeasterly to the easternmost point at Hunter's Point (Point Avisadero at 37 degrees, 43 minutes, 44 seconds N, 122 degrees, 21 minutes, 26 seconds W) and then in a direct line northeasterly to the Anchorage #9 buoy "A" (Y"A" buoy, flashing yellow 4s at 37 degrees, 44 minutes, 46 seconds N, 122 degrees, 19 minutes, 25 seconds W) and then in a direct line northwesterly to the Alameda N.A.S. entrance buoy #1 (G"1" buoy, flashing green 4s at the entrance to Alameda Carrier Channel, 37 degrees, 46 minutes, 38 seconds N, 122 degrees, 20 minutes, 27 seconds W) and then in a direct line northwesterly to the Oakland Harbor Bar Channel buoy #1 (G"1" buoy, flashing green 2.5s at 37 degrees, 48 minutes, 15 seconds N, 122 degrees, 21 minutes, 23 seconds W) and then in a direct line southwesterly to the point of beginning. (Tower C of the Oakland Bay Bridge, at 37 degrees, 47 minutes, 54 seconds N, 122 degrees, 22 minutes, 40 seconds W).

(E) No boats or nets shall be operated or set in violation of existing state regulations applying to the navigation or operation of fishing vessels in any area, including but not limited to San Francisco Bay, Tomales Bay, Humboldt Bay and Crescent City Harbor.

(F) Gill nets shall be marked at both ends with a buoy displaying above its waterline, in Roman alphabet letters and Arabic numerals at least 2 inches high, the official number of the vessel from which such net is being fished. Buoys shall be lighted at both ends using matching white or amber lights that may be seen for at least a distance of 100 yards and marked at both ends with matching flags or markers or placards, all of rigid or non-collapsible material of the same color, on a staff at least 3 feet above the water at each end, bearing the herring permit number in contrasting 4-inch black letters.

(G) The use of explosives, seal bombs, or marine mammal deterrent devices in the herring fishery is prohibited inside the waters of San Francisco Bay during the herring season.

(H) All San Francisco Bay herring permittees or their temporary substitutes shall recognize city ordinances governing transient noise sources, when fishing within 500 feet of any shoreline with residential dwellings, between the hours of 10:00 p.m. and 7:00 a.m. through implementation of noise reduction measures specified or developed by the herring fishing industry and approved by the department. Noise reduction measures include, but are not limited to: noise dampening devices for shakers and anchor chains, muffled engine exhaust systems, limited use of deck speakers, and/or reduced speed within 500 feet of shore.

(g) Quotas.

(1) Crescent City Area: The total take of herring in the Crescent City area for commercial purposes by use of gill net only shall not exceed 30 tons per season.

(2) Humboldt Bay: The total take of herring in Humboldt Bay for commercial purposes by use of gill net only shall not exceed 60 tons per season.

(3) Tomales Bay: The total take of herring for commercial purposes by use of gill net only shall

be as follows:

(A) In Tomales Bay waters a fishing quota, not to exceed 300 tons, shall be permitted for the ~~2002-03~~ 2003-04 season. However, if spawning escapement, as determined by the department, reaches or exceeds 3,000 tons prior to February 15, the quota shall be increased as follows: 1) if the spawning escapement is more than 3,000 tons, the total take of herring shall not exceed 400 tons for the season; 2) if spawning escapement is more than 4,000 tons, the total take of herring shall not exceed 500 tons for the season.

(B) The total take of herring for the fresh fish market shall not exceed 10 tons per season.

(4) San Francisco Bay: The total take of herring in San Francisco Bay for commercial purposes shall not exceed ~~3,540~~ 2,200 tons for the ~~2002-03~~ 2003-04 season. Tonnage shall be allocated on the following basis:

(A) Gill net permittees (including "CH" permittees): ~~3,520~~ 2,180 tons. Tonnage shall be allocated to each fishing group ("DH", odd, and even) in proportion to the number of permits that are assigned to each fishing group minus the number of permits in each platoon that are suspended for the entire season. Each gill net permittee (designated by the department in writing) participating in research sponsored by the department shall be assigned an individual quota equal to 0.5 percent of the season gill net quota per assigned platoon, unless provided for pursuant to subsection (g)(4)(B) of these regulations.

(B) The total take of herring for the fresh fish market shall not exceed 20 tons per season, except that ~~during the 2002-03 season only~~, 10 tons total may be transferred, in proportion determined by the department, to gillnet permittee(s) participating in research sponsored by the department pursuant to subsection (g)(4)(A) of these regulations.

(5) Ocean Waters: Herring may not be taken for roe purposes.

(h) Season.

(1) Humboldt Bay: The season shall be from noon on January 2 until noon on March 9.

(2) Crescent City: The season shall be from noon on January 14 until noon on March 23.

(3) San Francisco Bay: The season shall be from ~~5:00 p.m.~~ noon on December 1 until noon on December ~~20, 2002~~ 23, 2003, and from 5:00 p.m. on January ~~5~~ 4 until noon on ~~March 14, 2003~~ February 13, 2004.

(A) In San Francisco Bay, gill net permittees with even permit numbers and "CH" permittees assigned to the "even" fishing group shall be permitted to fish only on the following dates: January ~~5-10~~ 11-16, January ~~19-24~~ 25-30, February ~~8-13~~ 2-7, February ~~16-21~~, March ~~2-7~~.

(B) In San Francisco Bay, gill net permittees with odd permit numbers and "CH" permittees assigned to the "odd" fishing group shall be permitted to fish only on the following dates: January ~~12-17~~ 4-9, January ~~26-31~~ 18-23, February ~~1-6~~ 9-14, February ~~23-28~~, March ~~9-14~~.

(C) In San Francisco Bay, gill net permittees with "DH" permit numbers and "CH" permittees assigned to the "DH" fishing group shall be permitted to fish only on the following dates: December ~~4-6~~ 1-5, December ~~8-13~~ 7-12, December ~~15-20~~ 14-19, December 21-23. In the event permittees described under subsections (h)(3)(A) and (h)(3)(B) both reach their quotas pursuant to subsection (g)(4)(B), "DH" permittees, on notification by the department, may resume fishing operations until such group has reached the successive established termination date or quota.

(D) No more than six gill net permittees (designated in writing by the department) participating in research sponsored by the department shall be permitted to fish, under the direction of the department, from ~~5:00 p.m.~~ noon on December 1 until noon on December ~~20~~ 23, and from 5:00 p.m. on January ~~5~~ 4 until noon on ~~March 14~~ February 13.

(4) In Tomales Bay, the season shall be from 5:00 p.m. on December ~~29~~ 28 until noon on December 31, and from 5:00 p.m. on January ~~5~~ 4 until noon on March ~~7~~ 5.

(5) Herring fishing in Tomales Bay and San Francisco Bay is not permitted from noon Friday through 5:00 p.m. Sunday night.

(6) Ocean Waters: The season shall be from April 1 to October 31 for all authorized fishing gear except in districts 16 and 17 where the season shall be from April 1 to November 30.

(7) In the event permittees described under subsections (h)(3)(A) or (h)(3)(B) reach their quota pursuant to subsection (g)(4)(B), the alternate group of permittees on notification by the department may commence fishing operations until such group has reached the successive established termination date or quota.

(i) Any permit issued pursuant to this section may be suspended or revoked at any time by the commission for cause after notice and opportunity to be heard, or without a hearing upon conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery by a court of competent jurisdiction. A permittee whose permit has been suspended or revoked for conviction of a violation of Fish and Game Code statutes or Division 1, Title 14, CCR, while fishing as a participant in the herring fishery may request a hearing before the commission to show cause why his/her herring fishing privileges should be restored. A person whose herring permit has been revoked by the commission shall not participate in any herring fishery during the following season. A person whose herring permit has been suspended for the entire season by the commission shall not participate in any herring fishery during the season the permit is suspended. A person whose herring permit has been suspended for a period less than the entire season by the commission shall not participate in any herring fishery during the period that the permit is suspended. If a herring permit that had a temporary substitute is suspended by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season during the period that the permit is suspended. If a herring permit that had a temporary substitute is revoked by the commission due to the actions of the temporary substitute, the person who acted as the temporary substitute shall not participate in any herring fishery during the following season. If a herring permittee is convicted of a violation, or if the permit is suspended or revoked, due to the actions of a temporary substitute who is simultaneously fishing his or her own permit on a single vessel in the same fishing group, the person who was acting as the temporary substitute will receive the same penalty against his/her own permit as received by the permittee, pursuant to these regulations and Section 163.5, Title 14, CCR. For Category II violations prescribed in Section 163.5 (f) against a permit due to the actions of a temporary substitute while simultaneously fishing his/her own permit, equal points or penalties shall be assigned to the permit owned by the temporary substitute.

(j) Herring Buyer's Permit. A holder of a current fish receiver's license shall obtain a permit to buy herring for roe purposes for each fishing area specified in subsection (f)(1) of these regulations and approved by the department. After approval of an application and payment of the \$750 filing fee (filing fees in Humboldt Bay and Crescent City area shall be waived), a revocable, nontransferable permit to buy herring for roe purposes may be issued subject to the following regulations:

(1) The permittee shall permanently mark all vehicles, containers or pallets with individualized serial numbers and predetermined tare weights.

The serial number and predetermined tare weight shall be permanently marked in letters, and numerals at least 3 inches high on each side of vehicle container or pallet.

(2) A landing receipt must be made out immediately upon completion of weighing of any single boat load (hereinafter "load") of herring of a permittee. A sample of herring for roe testing purposes shall be taken from every load. No herring shall be taken for testing purposes from a

load that has not first been weighed and recorded.

(A) The landing receipt for each vessel must be completed and signed by both the herring permittee and a certified weigh master or his/her deputy prior to commencing unloading operations of another vessel.

(B) The weigh master or deputy filling out the landing receipt must include all information required by Fish and Game Code Section 8043 and shall sign the landing receipt with his/her complete signature. The weigh master shall list on the landing receipt the number of fish in, and the weight of, each roe test for the landing reported on the receipt.

(C) All landing receipts that have not been delivered to the department must be immediately available to the department at the weigh station.

(D) A reasonable amount of herring will be made available by the herring buyer to the department, at no cost, for management purposes.

(3) Prior to weighing herring, each permittee shall have each weighing device currently certified and sealed by the County Division of Weights and Measures.

(4) Weight tally sheets shall be used when any load of fish is divided and placed into more than one container prior to the completion of the landing receipt. Weight tally sheets shall include the time unloading operations begin.

(A) The tally sheets shall be composed of four columns:

1. The serial or I.D. number of all containers in which the load is initially placed and all subsequent containers, if any, in which the load is placed until, and including for, shipment from the buyer's premises.

2. The gross weight;

3. The tare weight of the bin or containers; and

4. The net weight of fish. Net weight will include the weight of the herring taken for testing purposes.

(B) The work or weight tally sheets shall be retained by the permittee for one year, and must be available at all times for inspection by the department.

(C) When requested by the department, the buyer shall submit to the department a California Highway Patrol weighing certificate for any truck load designated by the department. Such certificate shall be placed in the U.S. Postal system to the department's San Francisco Bay Area Marine Region office within twenty-four (24) hours of the truck's departure from the buyer's premises.

(5) In San Francisco Bay, herring may not be unloaded between the hours of 10 p.m. and 6 a.m., or at any time on Saturdays and Sundays, unless the permittee has notified and received prior approval from the department to conduct such activities during those hours.

(6) Every permittee shall comply with all applicable sections of the Fish and Game Code.

(7) The permittee is responsible to ensure that all provisions of the herring buyer's permit are complied with, even though the tasks may be delegated to others.

(8) The permit may be revoked upon violation of any provisions contained herein by the holder of the permit, his/her agents, servants, employees, or those acting under his/her direction or control and shall not be renewed for a period of one year from the date of revocation.

NOTE

Authority cited: Sections 1050, 5510, 8550, ~~and 8553~~, and 8555, Fish and Game Code.

Reference: Sections 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, Fish and Game Code.

